IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18759 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAYKUMARNATHURAMJAIN - Petitioner(s)
Versus
COLLECTOR AND DISTRICT NMAGISTRATE & 3 - Respondent(s)

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Appearance :
MR HEMANT B RAVAL for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2, 4,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR JITENDRA MALKAN for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 27/10/2005

ORAL JUDGMENT

1. This petition is filed under article 226 of the Constitution of India challenging the order dated 11.07.2005 passed by respondent no.1, District Magistrate, Ahmedabad in exercise of powers under Sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 detaining the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of essential commodities for public distribution System i.e. Kerosene, Blue Kerosene. He has challenged the impugned order on the ground that the same is violative of Articles 21 and 22 of the Constitution of India. The order of detention, alongwith the grounds supplied revealed that the commodity, i.e. blue kerosene is a basic requirement of

common man and it is made available to the public distribution system at very subsidized rate, through ration shops for distribution to the ration card holders. The competent authority determines the quantity of the kerosene to be sold to a ration card holder according to the policy of the Central Government framed in the year 1993, except the kerosene which is used for cooking purpose, for international and trading purpose, to import and sale of the kerosene in open market is permissible. The blue kerosene which is available for public distribution system and the kerosene which is available in the open market do have different prices and even colour. In the period between November, 2004 and February, 2005 free-sale kerosene in the open market was available at the rate of Rs.29/- per ltr, while blue kerosene meant for the public distribution system was priced at Rs.8.80-8.95/ per liter at a very subsidized

rate for distribution amongst the ration card holders. Thus, effective measures have been undertaken by the concerned authority to control, profiteering and to see the supply of such essential commodity like blue kerosene is not disrupted.

In the present case, the detenue is holding the management of Jay Khodiyar Consumers Co-operative Societies Ltd. situated in the area of Nirnaynagar, Taluka City, Chandlodiya in the district of Ahmedabad. Licence under the Act, 353 of 1998 which was issued by the government in accordance with law and as per the policy of the Government. The concerned officers have visited the shops in the month of February and March, 2005, of Jay Khodiyar Grahak Sahkari Bhandar Ltd. and the concerned officers have recorded the statements of the detenue, one Shri Mahendrakumar Nathuram Jain and another Shri Rajeshkumar Nathuram Jain. However, Rajeshkumar Nathuram Jain has

stated that he was paid Rs.3,000/- per month. In ground no.5 of the order of detention, the detaining authority has taken into consideration the irregularities committed by the detenue, which was detected as per the inquiry and visit made by the officers in the month of February and March. For a period of November, 2004 to February, 2005 it was found that 870 ltr of blue kerosene was illegally disposed of by drawing more than one bills in the name of individual card holder. So on, the mode adopted by the detenue is to dispose of the commodity in the name of card holders, whose names have already been cancelled, who are card holders for supply of gas, the card holders who are not attached to the shops and without making any entry in the ration card the bills were drawn and thus, the detenue has also disposed of some quantity of blue kerosene illegally. The record is produced before the detaining authority which shows that the

detenue has violated condition no.79 of condition no.7 of Clause 16 and 24 of the Gujarat Essential Commodities (License-Control and Declaration of Stock) 1981. The authority has also taken into consideration the criminal cases filed against the detenue under the violation of Sections 3 and 7 of the Act and released the detenue on bail by the J.M.F.C. Ahmedabad City on 27.05.2005.

It is pertinent to note that in ground no.7 it is stated that license of the shop came to be suspended by an order dated 01.04.2005 for the period of 90 days. Thus, the detaining authority has considered the above aspects and found that the activities of the detenue can not to be curbed by the departmental action or the remedies available under the Act, and therefore, the subjective satisfaction arrived at by the authority to detain the detenue under the provisions of this Act.

2. Mr. H.R.Prajapati, learned advocate for the petitioner has drawn the attention of this Court about various grounds raised in the petition for assailing the order of detention. However, he has restricted his arguments mainly on two grounds and submissions have been advanced accordingly. Firstly, the learned advocate for the detenue has submitted that the detaining authority has checked the ration shops for which due licences were given to him being licence no.395/98 and 603/98 and thereafter as early as in the month of February and March 2005 both the shops were visited for the purpose of checking the mode of distributing essential commodities and all the records pertaining to the purchase, sale stock register, bill books etc. were taken away by the authority pursuant to the seizure and even statements of the brothers of the detenue were also recorded, the concerned detaining

authority has waited till 11th July, 2005 to pass the order of detention, and therefore, according to the learned advocate for the petitioner, substantial delay has caused in passing the order of detention, which by itself is fatal, since preventing a person from indulging into black-marketing or activities detrimental to the smooth supply of essential commodities under public distribution system, immediate action is necessary. Therefore, according to him, on the ground of delay in passing the order of detention, the order of detention requires to be quashed and set aside.

The learned Counsel for the detenue has challenged the order of detention on the another ground that licence of detentue for shop no.1 was suspended by an order dated 29.03.2005 for a period of 90 days, with effect from 01.04.2005 and for shop no.2 by an order dated 01.03.2005 license was suspended for 60 days and thus, the detenue, license holder of

both the shops became unable to carry out any activities as per the terms and conditions of the license. No stock or any other items of essential commodities can be supplied by the authorities during the period of suspension and no trading activities can take place and therefore, according to the advocate of the detenue, when the wings of the detenue as a license holder of the shop, were clipped by the competent authority, there was no material before the authority to arrive at the subjective satisfaction about the detenue carrying out similar activities in future also. In absence of relevant and credible materials to arrive at the conclusion about the detenue continuing in illegal activities, the order requires to be quashed and set aside. In support of his arguments, he has drawn the analogy of the case when the detenue is in judicial custody and the same is noticed by the detaining authority, and thereafter arriving at

the subjective satisfaction of such detenue in judicial custody, preferring bail application and grant of such bail application and released thereon thereafter and also consequently such person to continue in similar illegal activities, the courts have taken view that for arriving at the subjective satisfaction of a detenue in a judicial custody, continuing in similar activities in future on getting enlarged on bail, must have relevant materials and simple recital on the basis of ipse dixit of such officer amounts non-application of mind on the part of the detaining authority to such aspects, and, therefore, the order is required to be quashed and set aside in such cases. In the present case also according to the learned advocate for the petitioner after licenses have been suspended by orders dated 29.03.2005 and 01.03.2005 for shop nos. 1 and 2 for a period of 90 and 60 days respectively, there was no material till 11th July, 2005, i.e. about for a

period of 3 months, with the detaining authority to arrive at the conclusion that in future also the detenue is also likely to continue in similar activities. Even no efforts have been made to conclude the proceedings initiated pursuant to the orders of suspension of license passed by the concerned authorities. Therefore, there is total absence of materials before the detaining authority to arrive at a subjective satisfaction about prejudicial and nefarious and illegal activities to be carried out by the petitioner in future also and there was no justification to pass such order with immediate effect after a lapse of 3 months from the initial action of inquiry etc. by the competent authority. In support of his arguments he has also placed reliance upon the order passed in S.C.A.No.13089/2004 in the case of Raju Sohanlal Chandel Vs. State of Gujarat and Ors. of dated 09.12.2004 delivered by the learned single judge of this Court wherein

somewhat similar facts, where a detenue was found to have indulged into black-marketing of blue kerosene was ordered to be released, relying on another decisions of this Court in S.C.A.No.7891 of 1998 and S.C.A.No.3152/2002 wherein the order of detention came to be quashed and set aside on the ground of subjective satisfaction being vitiated due to non application of mind on the relevant facts.

3. Learned A.G.P.Mrs. Hansa B. Punani has allegedly referred to the grounds of detention and submitted that the detenue has indulged into large scale irregularities and unauthorisedly disposed of blue kerosene which was meant for distribution under P.D.S. She has submitted that the activities of the detenue can certainly be said to be prejudicial in disrupting the supply of essential commodities, and also tried to justify that there was no delay in passing the order of detention, since

the criminal proceedings were taken against him and the application of bail was granted by the competent authority only on 16th May, 2005. Therefore, according to her, the concerned authority has considered exercise of powers under this Act, has the only remedy to prevent the detenue from indulging into illegal activities. She has submitted that release of the detenue on bail by the Competent Court on 16.05.2005 and even suspension of licence of both the shops are not adequate and considering this aspect the authority has exercised powers to detain the detenue under the Act. Lastly she has submitted that the prejudicial activities of the detenue as reflected in grounds supplied alongwith the order of detention sufficiently justifying the exercise of powers by the detaining authority.

4. Considering the rival submissions and the affidavit in reply it is evident from the

record that procedure of inquiry and seizure etc of the stock alongwith bill books stock register and other such materials was already completed as early as in the month of March, 2005. Even the order of bail granted by the court was available to the detaining authority on 16.05.2005 and thereafter also for a period of about one month and 25 days no immediate action is taken to prevent the detenue from indulging into illegal activities as alleged. Even the subjective satisfaction of the detaining authority as stated in ground no.9 in the order of detention revealed about suspension of two shops by orders dated 29.03.2005 and 01.03.2005 for a period of 90 days and 60 days respectively. Only reason assigned by the detaining authority for exercising the powers under the Act is the remedies under the Act by proceeding further departmentally against the detenue are inadequate. It is true that Court is not

empowered to undertake exercise about adequacy of the material before the detaining authority, at the same time simple recital about inadequate material by the concerned authorities is not sufficient. That justification for detaining the detenue with a view to prevent him from indulging into illegal activities must have some relevant materials and in the facts of the present case, there is no such material after the license of both the shops came to be suspended. There is no such incidents of any criminal activities committed by the detenue after the suspension of license. Not only that, but by virtue of suspension of licenses, license holder becomes virtually in-affective in continuing any activity as per the terms and conditions of the license or under the provisions of the Act. No stock is supplied to such license holder and no other activities are permitted to be done by the detenue. In such circumstances, only reasoning of

conclusion of detaining authority about inadequacy of the detrimental action is nothing but ipse dixit of the officer, and, therefore, this Court observed as held in Para-6 of the judgment dated 09.12.2004 in S.C.A.No.13089/2004 rendered by the learned Single Judge of this Hon'ble Court.

> “ The grounds of detention show that the petitioner was a licence holder. He could not have purchased crude, kerosene or volatile kerosene from open market not could have sold the same in black market after suspension of licence. The apprehension in the mind of the detaining authority that immediate prevention of black marketing activity of the petitioner could be secured only by passing order for preventive detention is nothing, but his imagination. No doubt if alternative remedies were under consideration before the detaining authority and were actually considered this Court will not interfere in subjective satisfaction of the detaining authority. However, if the detaining authority has considered the alternative

remedy in apparently, arbitrary manner without considering how a kerosene or purified kerosene to sell it in black market it would not be in the interest of justice for this Court to put a blank seal to such arbitrary subjective satisfaction of the detaining authority. On the face of the record the subjective satisfaction of the detaining authority on this point suffers from non application of mind to the material on record and is certainly arbitrary."

5. In the above circumstances, on this ground alone, the order of detention dated 11.07.2005 requires to be quashed and set aside and accordingly the same is quashed and set aside. The detenue is hereby ordered to be set at liberty forthwith if he is not required in any other case by any other authority. Rule is made absolute. Direct Service permitted.

(ANANT S. DAVE, J.)

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